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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 1**

Revisions of Boundaries, Regulations and Zoning Scheme for Florida Keys National Marine Sanctuary; Revisions of Fish and Wildlife Service and State of Florida Management Agreement for Submerged Lands within Boundaries of the Key West and Great White Heron National Wildlife Refuges and Regulations; Intent to Prepare a Draft Environmental Assessment or Environmental Impact Statement; Notice of Scoping Meetings

**AGENCIES:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC) and National Wildlife Refuge System, Fish and Wildlife Service (FWS), U.S. Department of the Interior (DOI).

**ACTION:** Notice of Intent to Conduct Scoping Meetings for the Revision of Boundaries, Regulations and Zoning Scheme for Florida Keys National Marine Sanctuary and Key West and Great White Heron

National Wildlife Refuges; and to Prepare an Environmental Assessment or Draft Environmental Impact Statement.

**SUMMARY:** In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) and the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) and the National Wildlife Refuge System of the Fish and Wildlife Service (FWS) have initiated a review of Florida Keys National Marine Sanctuary (FKNMS or sanctuary) boundaries, regulations and zoning scheme. This review of existing regulations and marine zoning may result in changes to regulations, marine zoning, such as altering boundaries of current zones, creating new zones, or amending the regulations that apply to individual zones, and possibly sanctuary boundaries. The review will also include the FWS's Backcountry Management Plan and associated regulations, as authorized by the FWS and State of Florida Management Agreement for Submerged Lands within Boundaries of the Key West and Great White Heron National Wildlife Refuges, to evaluate substantive progress toward implementing the backcountry management goals for the refuges.

**DATES:** All comments on issues related to the boundaries, regulations and zoning scheme of Florida Keys National Marine Sanctuary and the agreement for submerged lands within boundaries of the Key West and Great White Heron National Wildlife Refuges and associated regulations will be considered if received on or before June 29, 2012. See SUPPLEMENTARY INFORMATION section below for the dates, times, and locations of the public scoping meetings.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Submit electronic comments via the Federal eRulemaking Portal, FDMS Docket Number NOAA-NOS-2012-0061.
- Mail: Sean Morton, Sanctuary Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040 and Anne Morkill, Refuge Manager, U.S. Fish and Wildlife Service, 28950 Watson Blvd., Big Pine Key, FL 33043.
- Instructions: All comments received are a part of the public record and will be generally posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA

will accept anonymous comments (enter N/A in the required fields to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Sean Morton, Sanctuary Superintendent, FKNMS, Telephone: (305) 809-4700 x233 or Anne Morkill, Refuge Manager, USFWS, Telephone: (305) 872-2239 x209.

**SUPPLEMENTARY INFORMATION:** In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) as amended by the National Wildlife Refuge System Improvement Act of 1997, the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) and the National Wildlife Refuge System of the Fish and Wildlife Service (FWS) have initiated a review of Florida Keys National Marine Sanctuary (FKNMS or sanctuary) boundaries, regulations and zoning scheme. Collectively, NOAA and FWS will make revisions to the sanctuary boundaries, regulations and zoning scheme and backcountry management agreement as necessary to fulfill the purposes and policies of the NMSA, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA; Pub. L. 101-605), and the National Wildlife Refuge

System Improvement Act of 1997 (NWRSA; Pub. L. 105-57). The review is being undertaken in response to several factors, including community interest in examining management and conservation strategies, the need to adapt sanctuary and refuge management to changing conditions such as emerging threats to resources, recent scientific findings showing degraded habitat and how resources may be improved with various long-term management efforts, and legal requirements. More information about this process can be found at

<http://floridakeys.noaa.gov/review/welcome.html>

### **Florida Keys National Marine Sanctuary**

The NMSA (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries (ONMS). Florida Keys National Marine Sanctuary (FKNMS) was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101-605). FKNMS extends approximately 250 statute miles southwest from the southern tip of the Florida peninsula, and is composed of both state and Federal waters. The sanctuary's marine

ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys. Other goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection as well as educating the public about the Florida Keys marine environment.

The National Oceanic and Atmospheric Administration (NOAA), a federal agency within the Department of Commerce, administers FKNMS. With 60 percent of its protected area located in Florida state waters, the sanctuary is jointly managed by NOAA and the State of Florida under a co-trustee agreement. Under this agreement, NOAA's primary management partner is the Florida Department of Environmental Protection (DEP). Any amendments to the management plan will be submitted and reviewed pursuant to the State of Florida's clearinghouse process. Any amendments to sanctuary regulations require the approval of the Governor on behalf of and with the approval of the Florida Trustees (the Governor and Cabinet of the State of Florida act as the Board of Trustees of the Internal Improvement Trust Fund) in order to be effective in State waters and submerged lands, except for merely

editorial amendments, technical corrections, and emergency regulations.

In FKNMS, NOAA regulates the following: injuring coral; fishing; discharges and deposits; impacts to the seafloor, including from dredging and dumping; discharges of sewage from vessels; vessel operations, including personal watercraft and airboats, that cause injuries to resources, humans or property; anchoring on coral; wakes near residential shorelines; vessel operations near diving/use of dive flags; releasing exotic species; damage to markers, buoys and scientific equipment; injuring historical resources; use of explosives and electric charges; harvest of marine life species except as allowed by the Florida Fish and Wildlife Conservation Commission; and activities in specified zones. Information on sanctuary regulations can be found online at <http://floridakeys.noaa.gov/regs/welcome.html?s=management>

The types of zones currently in place in the sanctuary are: ecological reserves, sanctuary preservation areas, wildlife management areas, existing management areas, and special-use areas. A more detailed description of sanctuary zones can be found online at <http://floridakeys.noaa.gov/zones/types.html>. In addition, the FKNMS revised management plan is available for download at <http://floridakeys.noaa.gov/mgmtplans/2007.html>.

**Key West and Great White Heron National Wildlife Refuges**

In the Key West and Great White Heron National Wildlife Refuges, the Fish and Wildlife Service (FWS) may implement restrictions to minimize wildlife disturbance and habitat destruction in state waters from non-wildlife-dependent activities under a joint management agreement with the State of Florida for submerged lands. The FWS protects backcountry resources in state waters with limits on access/operation of vessels, jet skis, and air boats; buffer zones; water skiing; and aircraft water landings. The FWS backcountry management plan is available for download at <http://www.fws.gov/nationalkeydeer/backcountry.html>. Additional information about the management goals and objectives for the Key West and Great White Heron National Wildlife Refuges is described in the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan, available for download at <http://www.fws.gov/southeast/planning/CCP/LowerFLkeysFinalPg.html>.

NOAA and the FWS anticipate that completion of the revised boundaries, regulations, zoning scheme, backcountry management plan and concomitant documents will require approximately forty-eight months from the date of publication of this notice of intent. This joint review process will occur concurrently with a public process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). This notice confirms that NOAA and FWS will coordinate their responsibilities under section 106 of the



National Historic Preservation Act (NHPA, 16 U.S.C. 470) with the ongoing NEPA process, pursuant to 36 CFR 800.8(a). Therefore, the NEPA documents and public and stakeholder meetings associated with this process are also intended to meet the section 106 requirements.

### **Sanctuary Advisory Council**

Sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries. Councils also serve as liaisons between their constituents in the community and sanctuaries. Sanctuary advisory councils provide advice about sanctuary operations and projects, including education and outreach, research and science, regulations and enforcement, and management planning. They are particularly critical in helping a sanctuary during reviews of regulatory actions such as this zoning review. Council members provide expertise on both the local community and sanctuary resources, strengthen connections with the community, and help build increased stewardship for sanctuary resources.

The advisory council for Florida Keys National Marine Sanctuary has recommended the following goals and objectives to the sanctuary superintendent for this review:

- A. To improve the diversity of natural biological communities in the Florida Keys to protect, and, where appropriate restore and

enhance natural habitats, populations and ecological processes overall and in each of these subregions Tortugas, Marquesas, Lower, Middle, and Upper Keys.

1. Reduce stresses from human activities by establishing areas that restrict access to sensitive wildlife populations and habitats.
2. Protect large, contiguous, diverse and interconnected habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life and protect and preserve all habitats and species.
3. Improve/maintain the condition of the biologically structured habitats including
  - a. Coral Reef
    - i. Inshore Patch Reef
    - ii. Mid-Channel Patch Reef
    - iii. Offshore Patch Reef
    - iv. Reef Margin/Fore Reef
    - v. Deep Reef
  - b. Seagrass Bed
  - c. Hardbottom
  - d. Coastal Mangrove

4. Increase abundance and condition of selected key species including corals, queen conch, long spined sea urchin, apex predatory fish, birds and sea turtles.

B. To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

1. Minimize conflicts among uses compatible with the National Marine Sanctuary.

2. Prevent heavy concentrations of uses that degrade Sanctuary resources.

3. Provide undisturbed monitoring sites for research and control sites to help determine the effects of human activities.

4. Achieve a vibrant ecologically sustainable ecosystem and economy.

- a. Apply the best available science and balanced, conservation based management.

The sanctuary advisory council has also recommended the following guiding principles to the sanctuary superintendent for this review:

1. The regulation/zoning review of Florida Keys National Marine Sanctuary should be conducted with the recognition that there are bordering and overlapping marine management

regimes in place, and that these regimes must be considered when contemplating changes to the regulation/marine zoning structure for Florida Keys National Marine Sanctuary.

2. All areas of Florida Keys National Marine Sanctuary should be classified as part of a specific zone, therefore the current "unzoned" area should be classified as a recognized zone type such as "general use area" or "multiple use area".

3. Each habitat type should be represented in a non-extractive marine zone in each of the biogeographically distinct sub regions of Florida Keys National Marine Sanctuary to achieve replication. The subregions identified were the Tortugas, Marquesas, and Lower, Middle, and Upper Keys.

4. Information on resilient reef areas that can serve as refugia should be taken into account in zoning changes.

5. Temporal zoning should be considered as a tool for protecting spawning aggregations and nesting seasons.

6. The size of individual non-extractive zoned areas, the cumulative total area included in non-extractive zones, and their spatial relationship with one another matter greatly in achieving the resource protection purposes of Florida Keys National Marine Sanctuary.

Members of the public are encouraged to contact the current council members who represent their areas of interest, as one of

the roles of the members is to serve as a liaison between the sanctuary and members of the community. Contact information for advisory council members can be found at:

<http://floridakeys.noaa.gov/sac/members.html>

## **Review Process**

In accordance with Section 304(e) of the NMSA, 16 U.S.C. 1431 *et seq.*, the NOAA ONMS is initiating a review of the sanctuary boundaries, regulations and zoning scheme to evaluate the substantive progress made toward implementing the management plan and goals for the sanctuary. In accordance with Section 4 of National Wildlife Refuge System Administration Act of 1966 (NWRSA; 16 U.S.C. 668dd *et seq.*), the ONMS and the FWS are also jointly initiating a review of the FWS backcountry management plan for the Key West and Great White Heron National Wildlife Refuges to evaluate the substantive progress made toward implementing the goals and objectives. ONMS and the FWS anticipate drafting revised boundaries, regulations, zoning scheme, backcountry management agreement and concomitant documents as a result of this review. The current management plan for FKNMS was completed by NOAA in 2007. Contained within it is the FKNMS marine zoning action plan. It describes the five types of zones in the sanctuary, goals and objectives for marine zoning, and implementation strategies and

actions. This review implements the marine zoning and regulatory action plans and strategies of the current management plan.

The current FWS backcountry management plan and associated agreement for the Key West and Great White Heron National Wildlife Refuges was signed in 1992; it may be reviewed and revised every 5 years, although no prior reviews have occurred since the original plan was completed and the associated management agreement with the State of Florida is due to expire in 2017. The FWS, FKNMS and the State of Florida are reviewing the backcountry management agreement for potential revision and renewal.

There are several reasons for undertaking this review:

- Community and sanctuary advisory council interest in reexamining sanctuary management and conservation strategies, expressed during and subsequent to management plan reviews;
- Periodic evaluation of regulations and sanctuary zones ensures they continue to function best for dynamic natural resources and evolving human uses;
- The Florida Keys National Marine Sanctuary Condition Report 2011 shows human actions continue to degrade the habitat and living resources of the sanctuary, but habitat and resources may be improved with long-term management efforts, regulatory compliance, and community involvement;

- Emerging threats to the resources were largely unanticipated when the regulations were first issued and need to be addressed; and
- Reviews of the sanctuary and refuge backcountry management plans are required by law.

The review process is composed of five primary stages:

- 1) Information collection and characterization, including public scoping meetings;
- 2) Recommendation of the advisory council of Florida Keys National Marine Sanctuary on revised boundaries, a revised zoning scheme and associated regulations, with possible working groups and public workshops;
- 3) Preparation and release of draft revised boundaries, zoning scheme, backcountry management agreement, environmental evaluation, and, if appropriate, regulations or amendments to current regulations;
- 4) Public review and comment on the draft boundaries and zoning scheme, proposed regulatory amendments, and other documents mentioned above; and
- 5) Preparation and release of final revised boundaries, zoning scheme, backcountry management agreement, environmental evaluation, and, if appropriate, regulations.

NOAA and the FWS anticipate that the completion of the boundaries, zoning scheme, backcountry management agreement and concomitant documents will require approximately forty-eight months.

At this time, NOAA and FWS are opening a public scoping period to:

1. Solicit public comments on the boundaries, regulations and zoning scheme of Florida Keys National Marine Sanctuary; and the submerged lands within the boundaries of the Key West and Great White Heron National Wildlife Refuges and associated regulations; and
2. Help determine the scope of issues to be addressed in the preparation of boundaries, a zoning scheme, a backcountry management agreement, and an environmental assessment or environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA).

To that end, NOAA and FWS will conduct a series of scoping meetings in the Florida Keys and south Florida to collect public comment. These scoping meetings will also help determine the scope of issues to be addressed in the preparation of an environmental assessment or EIS pursuant to the NEPA, 43 U.S.C. 4321 *et seq.* The public scoping meeting schedule is presented below.



**Public Scoping Meetings:** The public scoping meetings will be held on the following dates and at the following locations beginning at 4pm unless otherwise noted:

**1. Marathon, Florida**

**Tuesday, June 19, 2012**

Monroe County Government Center

Emergency Operations Center/Board of County Commissioners Meeting Room

2798 Overseas Highway

Marathon, FL 33050

**2. Key Largo, Florida**

**Wednesday, June 20, 2012**

Key Largo Library

101485 Overseas Hwy.

Tradewinds Shopping Center

Key Largo, FL 33037

**3. Key West, Florida**

**Thursday, June 21, 2012**

Doubletree by Hilton Hotel Grand Key Resort - Key West

Tortuga Ballroom

3990 S. Roosevelt Blvd.

Key West, FL 33040

**4. Miami, Florida**

**Tuesday, June 26, 2012**

Florida International University, Modesto A. Monique Campus

Graham University Center, Room GC 243

11200 S.W. 8<sup>th</sup> St.

Miami, FL 33199

**5. Fort Myers, Florida**

**Wednesday, June 27, 2012**

Joseph P. Alessandro Office Complex

Rooms 165 C and D

2295 Victoria Ave.

Fort Myers, FL 33901

**Consultation under National Historic Preservation Act**

This notice confirms that NOAA and the FWS will coordinate their responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with the ongoing NEPA process, pursuant to 36 CFR 800.8(a) including the use of NEPA documents and public and stakeholder meetings to also meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: "any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that

are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria."

In coordinating its responsibilities under the NHPA and NEPA, NOAA and the FWS intend to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA's NEPA procedures, and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any environmental assessment or draft environmental impact statement.

### **Condition Report**

In preparation for this review, NOAA has produced a Florida Keys National Marine Sanctuary Condition Report 2011. The Condition Report provides a summary of resources and their conditions; pressures on those resources; the current condition and trends of water, habitat, living resources; maritime archeological resources; human activities that affect those resources; and management responses to pressures that threaten the integrity of

the marine environment. The report serves as a supporting document for the review process, to inform constituents of the current status of sanctuary resources.

An electronic copy of the Florida Keys National Marine Sanctuary Condition Report 2011 is available to the public on the Internet at:

<http://sanctuaries.noaa.gov/science/condition/fknms/welcome.html> .

### **Scoping Comments**

Scoping meetings provide an opportunity to make direct comments to, and share information with, NOAA and the FWS on the boundaries, zones, and regulations of the entire sanctuary, and the management of and regulations for resources associated with the submerged lands of the Key West and Great White Heron National Wildlife Refuges. We encourage the public to participate and welcome any comments on the scope, types, and significance of issues related to the sanctuary's boundaries and zoning scheme, the FWS's backcountry management plan, and associated regulations. In particular, we are interested in hearing about the public's view on the potential management within specified zones in the sanctuary/submerged lands with the two refuges for the next ten to fifteen years.

Authority: This notice is published under the authority of the National Marine Sanctuaries Act, as amended (16 U.S.C. 1431 et seq; 16 U.S.C. § 470), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd et seq.); and National Historic Preservation Act (16 U.S.C. 470).

_____	April 6, 2012	_____
Daniel J. Basta	Date	
Director for the Office of		
National Marine Sanctuaries		

_____	April 3, 2012	_____
Cynthia K. Dohner	Date	
Regional Director		
Fish and Wildlife Service		

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